

A. G. Contract No : KR04-1725TRN
ADOT ECS File No JPA 04-042
Project No.: H3957 01C
Project: Junction SR 69/89
TRACS No.: H395701C
Budget Source Item: 12604

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
YAVAPAI-PRESCOTT INDIAN TRIBE

THIS AGREEMENT is entered into 9th of February, 2005 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), and the YAVAPAI-PRESCOTT INDIAN TRIBE, acting by and through the BOARD OF DIRECTORS (the "Tribe")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Tribe is empowered to enter this Agreement by Arizona Revised Statutes Section 11-952 and its Articles of Association and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tribe

3. The State and the Tribe agree upon roadway improvements at the intersection of State Route SR 89 & 69 in Prescott, Arizona, to include the widening of SR 69 to (3) three-lanes in each direction with dual left turn lanes from the existing (2) two-lanes as shown on Exhibit A, attached hereto and made of part hereto at an estimated amount of \$250,000.00, hereinafter referred to as the "Project".

Both Parties Agree:

At the completion of the Project, the State, will deliver or cause to be delivered by its contractor(s), excess earth fill materials from the State's project at no cost to the Tribe, to a designated site area approved by the Tribe, as shown on the final Project construction plans. This agreement does not require the State to deliver, locate, or purchase more material for the Tribe, should the Tribe's project require more earth fill material than what is available after all related material requirements for the State's Project are satisfied.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

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NO. 27364
Filed with the Secretary of State
Date Filed: 02/09/05
Janice K. Brewer
Secretary of State

By: Jimmy D. Graenewald

II. SCOPE OF WORK

1. The State Will:

- a. Be responsible for the total cost of the Project in an amount estimated at \$250,000.00.
- b. Prepare and provide design plans, specifications, estimates, environmental requirements, and other such documents and services required for the bidding and construction of the Project, and provide copies to the Tribe for comment and review.
- c. Advertise for bids and award one or more construction contract(s) for the Project. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the State.
- d. Obtain the necessary revocable conditional use permit from the Tribe, at no cost to the State, for temporary construction to construct roadway side slopes for pavement.
- e. Replace all right-of-way fences that it removes or alters during the construction of the Project.
- f. Ensure that all driveways and motor vehicle access to Tribal property and businesses remain unobstructed are patched with temporary asphalt patches during construction of the Project. If any driveways or accesses are temporarily obstructed or closed, and give prior notice to the Yavapai Gaming Agency.
- g. Relocate, at its costs, any utilities that must be relocated. Before relocation, the State will consult the Tribe about its relocation intentions.
- h. Deliver or cause to be delivered by its contractor(s), excess earth fill materials from the State's Project to a designated site area approved by the Tribe to compact an embankment for the Tribe's project as shown in the final ADOT construction plans. This agreement does not require the State to deliver, locate, or purchase more material for the Tribe, should the Tribe's project require more earth fill material than what is available after all related material requirements for the State's Project is satisfied.

2. The Tribe Will:

- a. Review the design documents and provide comments as necessary.
- b. Grant the State revocable conditional use permits for temporary construction, at no cost to the State, for construction of roadway side slopes, and widening on the north side of SR 69 for the construction of improvements on SR 69 at the west end of Frontier Village development, on the north side and the south side of SR 69 at Heather Heights, and on SR 69 west of Heather Heights on the south side of SR 69 for a right turn lane.
- c. Grant the State emergency access easement for maintenance repairs to the drainage ways and side slopes.
- d. Accept any excess earth fill materials from the State's Project for the purpose of compacting an embankment for the Tribe's project.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements provided herein. This Agreement may be canceled at any time prior to the award of the Project construction contract, upon (30) thirty-day written notice to either party.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event there are changes in the scope of work, extra work, or changes in the planned work covered by this agreement, a modification to this agreement in the form of a Construction Change Order issued by the State's Resident Engineer, signed by representatives of the parties hereto is required prior to the start of work on said changes or additions.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The State shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is contingent upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Yavapai-Prescott Indian Tribe
President
530 East Merritt
Prescott, AZ 86301

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

If to the Yavapai Gaming Agency:
Yavapai Gaming Agency
Bill Maxwell
300 S. Heather Heights Road
P.O. Box 10290
Prescott, Arizona 86304

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

YAVAPAI-PRESCOTT INDIAN TRIBE

By 
ERNEST JONES, SR.
President

STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

By 
LORNA GALEANO
Secretary-Treasurer



SR 69 IMPROVEMENTS

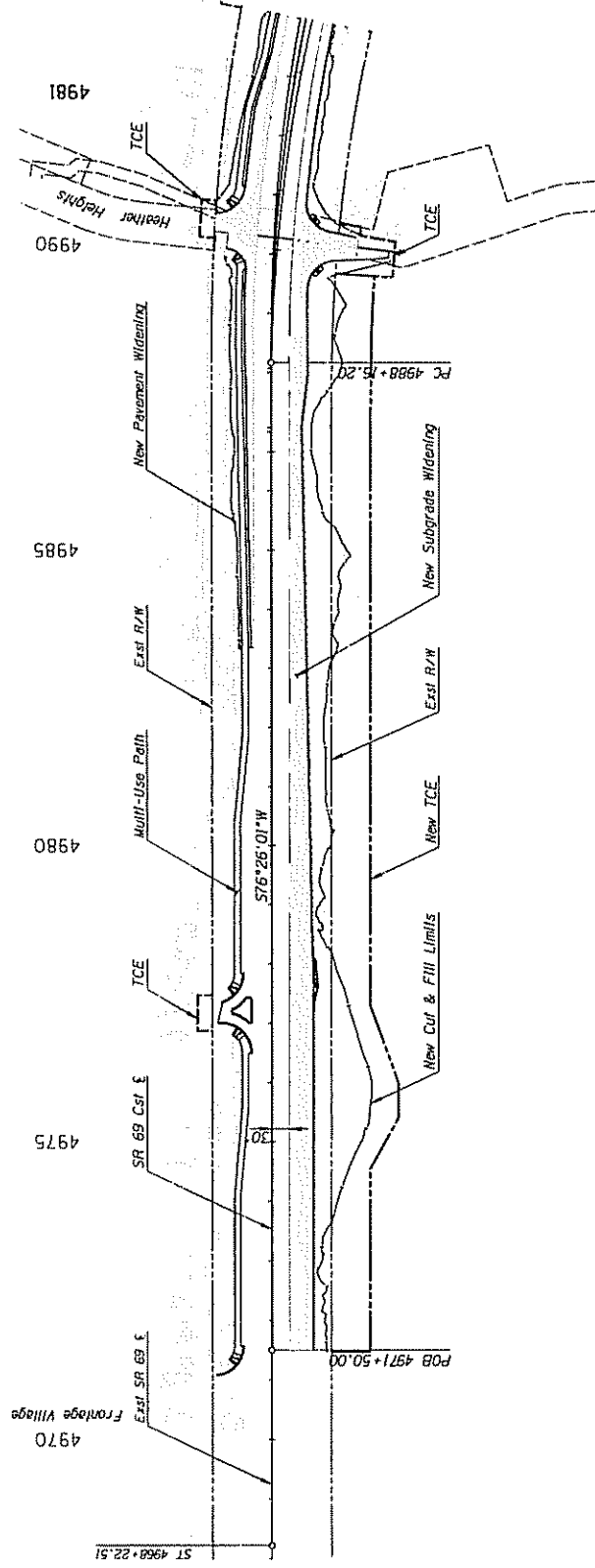


EXHIBIT A

11/22/2004



SR 69 IMPROVEMENTS

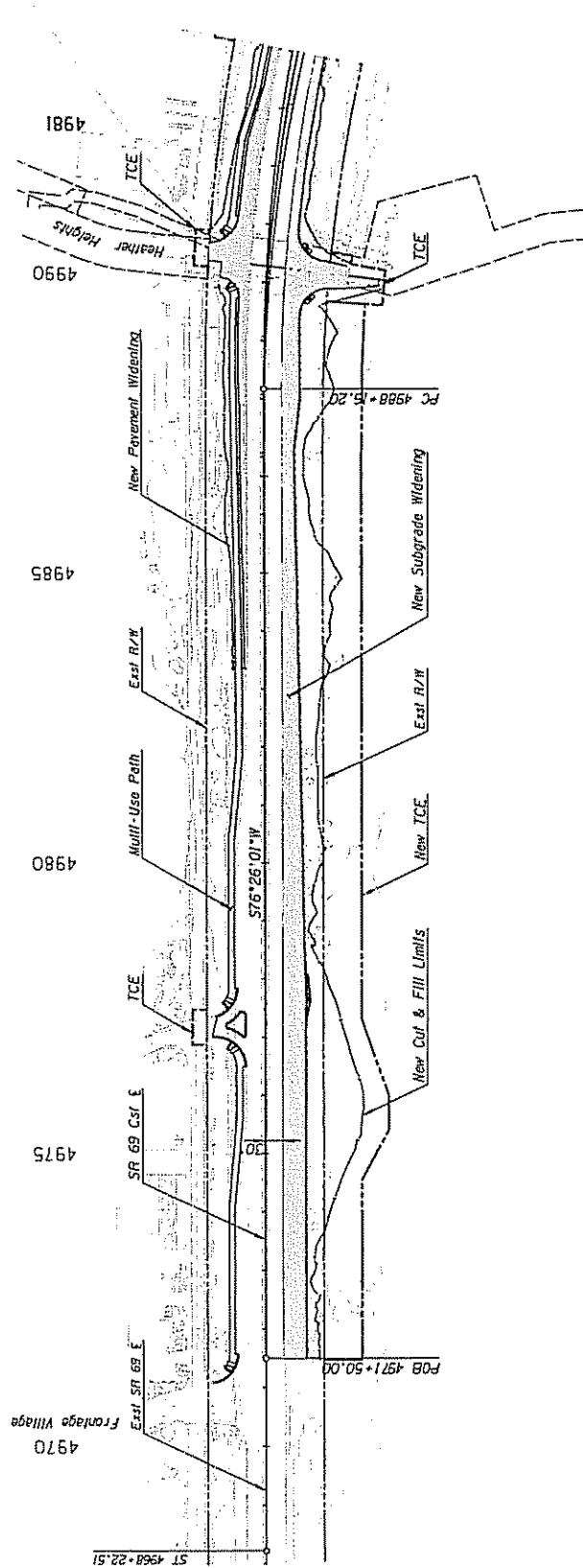


EXHIBIT A

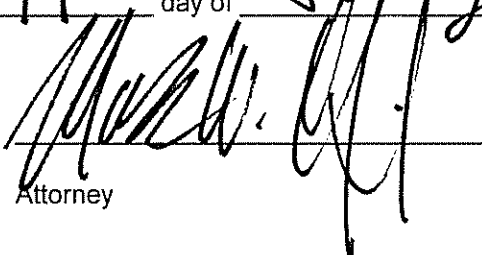
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JPA 04-042

ATTORNEY APPROVAL FORM

FOR THE YAVAPAI-PRESCOTT INDIAN TRIBE

I have reviewed the above referenced agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the YAVAPAI-PRESCOTT INDIAN TRIBE. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 19 day of January, 2005

Attorney

RESOLUTION NO. 05-01
OF THE GOVERNING BODY OF THE
YAVAPAI-PRESCOTT INDIAN TRIBE

- WHEREAS, the Yavapai-Prescott Indian Tribe is a federally recognized Indian Tribe within the State of Arizona; and,
- WHEREAS, the Yavapai-Prescott Indian Tribal Board of Directors is the governing body of the Yavapai-Prescott Indian Tribe, in accordance with the Tribal Articles of Association; and,
- WHEREAS, the Tribe intends to expand the highway network in its Reservation to increase the opportunities for economic development and improve traffic flow; and,
- WHEREAS, the Tribe wishes to enter into an agreement with the Arizona Department of Transportation to allow it to widen State Route 69 to three lanes in each direction with dual left turn lanes, and deposit excess earth fill material at the corner of Heather Heights and State Route 69.

NOW THEREFORE BE IT RESOLVED THAT the Yavapai-Prescott Indian Tribe Board of Directors is authorized to execute the Intergovernmental Agreement with the State of Arizona Department of Transportation, regarding project H3957 01C on State Route 69. The Intergovernmental Agreement is attached hereto.

BE IT FURTHER RESOLVED THAT the President of the Yavapai-Prescott Indian Tribal Board of Directors is authorized to execute all further documents and take all further steps to accomplish the purposes of the Intergovernmental Agreement.

CERTIFICATION


I, the undersigned, as President of the Board of Directors for the Yavapai-Prescott Indian Tribe, hereby certify that the Board is composed of five (5) members, of whom five (5) members, constituting a quorum, were present at a Regular Board Meeting this 14th day of January, 2005 and that the foregoing Resolution was adopted by a vote of 4 for, 0 against under the authority of the Articles of Association, Article VI, Section 1, paragraph (a), and (j).



PRESIDENT, BOARD OF DIRECTORS
YAVAPAI-PRESCOTT INDIAN TRIBE

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ATTEST:



SECRETARY/TREASURER, BOARD OF DIRECTORS
YAVAPAI-PRESCOTT INDIAN TRIBE



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

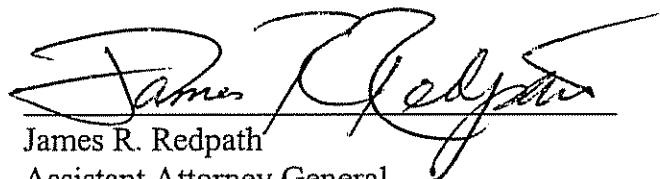
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1725-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 2 February 2005

Terry Goddard
ATTORNEY GENERAL


James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214